

**IN THE UNITED STATES DISTRICT COURT FOR THE  
MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION**

**IN RE NISSAN NORTH AMERICA, INC. )  
ODOMETER LITIGATION ) MDL Docket No. 3:08-md-1921  
                          )  
                          ) ALL CASES  
                          )  
                          ) Judge Trauger**

**MEMORANDUM AND ORDER**

Pending before the court are several motions filed by the plaintiffs: a Motion to Modify Scheduling Order and for Leave to Conduct Discovery (Docket No. 116), a Motion for Leave to File a Supplemental Response in Opposition to Defendants' Motion for Summary Judgment (Docket No. 114), and a Motion for Leave to File Certain Materials Under Seal (Docket No. 113). For the reasons discussed below, these motions will be denied.

The plaintiffs have filed these motions because they recently learned that the defendants plan to launch an "odometer service campaign" for 2007-08 Infiniti FX vehicles. Nissan now knows that an electronic module installed in the FX vehicles causes the speedometers to run 3.58% faster than normal. This, in turn, causes the odometer to over-register miles driven by 3.58%. Nissan apparently learned of these issues after receiving numerous consumer complaints, which Nissan failed to produce to the plaintiffs. The plaintiffs seek to include information regarding the odometer service campaign in a supplemental response to the defendants' Motion for Summary Judgment. They also seek to re-open discovery on their Odometer Act claim.<sup>1</sup>

The revelation about the FX vehicles, however, is irrelevant to the viability of the

---

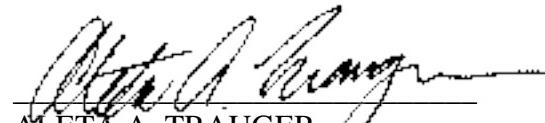
<sup>1</sup> Under the Case Management Order, the deadline for fact discovery regarding the Odometer Act claim was December 1, 2009. (Docket No. 64 at 6.)

plaintiffs' Odometer Act claim. This new information does nothing to affect the court's determination of what constitutes an "odometer" under the Act, and it does not change the court's determination that Nissan's actions do not create liability under the Act. Although information regarding Nissan's knowledge of this odometer defect may be relevant to the plaintiffs' state-law claims, the instant motions concern only the Odometer Act claims.

Accordingly, the plaintiffs' motions (Docket Nos. 113-14, 116) are **DENIED**. The documents filed under Docket No. 115 shall remain sealed, until otherwise ordered, pursuant to the Protective Order entered in this case (Docket No. 71).

It is so Ordered.

Entered this 20th day of September 2010.



ALETA A. TRAUGER  
United States District Judge